

1 DAVID W. MÁRQUEZ
2 ATTORNEY GENERAL

3 Elizabeth J. Barry
4 Laura C. Bottger
5 Assistant Attorneys General
6 1031 W. 4th Avenue, Suite 200
7 Anchorage, AK 99501-1994
8 Telephone: 907-269-5100
9 Fax: 907-279-2834

10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ALASKA**

12 STATE OF ALASKA,)

13 Plaintiff,)

14 v.)

15 UNITED STATES OF AMERICA, Gale A.)
16 Norton, in her capacity as Secretary of the)
17 Interior; and Michael C. Shupe, William C.)
18 Fejes, Kim Dolphin, Brenda Fair, Dan Fair,)
19 Shany Fair, Timothy Garnett, Deryl F. Krause,)
20 Lloyd D. Swenson, Tim J. Swenson, Jack)
21 McManus, Petro Star, Inc., Doyon Limited,)
22 Alaskan Northwest Natural Gas Transportation)
23 Company, Yukon Pacific Corporation,)
24 Sukakpak, Inc.,)

25 Defendants.)

Case No. _____

26 **COMPLAINT**

The plaintiff, State of Alaska ("State"), for its complaint and cause
of action against the defendants alleges:

NATURE OF ACTION

1
2 1. This is an action for declaratory relief and to quiet title to what
3 are commonly called the "Coldfoot to Chandalar Lake Trail" (known as "RST 9"
4 in the State casefile system) and the "Caro to Coldfoot Trail" (known as "RST
5 262" in the state casefile system) (hereinafter referred to as the "rights-of-way").
6 *See* attached Exhibit A (an illustration of the trails). Plaintiff and the defendants
7 all claim variously conflicting interests with the rights-of-way.
8

9
10 2. The Coldfoot to Chandalar Lake Trail (RST 9) and the Caro to
11 Coldfoot Trail (RST 262) are public rights-of-way granted by the United States
12 pursuant to the Act of July 26, 1866, ch. 262, § 8, 14 Stat. 251, 253, which was
13 codified as Revised Statute 2477 and subsequently recodified as 43 U.S.C. § 932
14 (repealed in 1976 with a savings provision), hereinafter referred to as "R.S. 2477."
15

JURISDICTION AND VENUE

16
17 3. This court has jurisdiction over this action pursuant to 28 U.S.C.
18 §§ 1331, 1346(f), and 2409a. The United States has consented to this lawsuit
19 pursuant to 28 U.S.C. § 2409a.
20

21 4. Pursuant to 28 U.S.C. § 2409a(m), the State provided notice to
22 the United States of its intent to file this action by letter to Gale A. Norton,
23 Secretary of the Interior, dated March 17, 2004 (re: Coldfoot to Chandalar Lake
24 Trail (RST 9)); and by letter to Bruce Babbitt, then Secretary of the Interior, dated
25 December 13, 1993 (re: Caro to Coldfoot Trail (RST 262)). These letters
26 provided the basis for the suit and described the lands at issue.

1 5. The real property that is the subject of this action is located
2 within the boundaries of the District of Alaska and venue of the claims stated
3 herein is proper pursuant to 28 U.S.C. § 1391(e) and 28 U.S.C. § 81A.
4

5 6. This court has supplemental jurisdiction over the pendant state
6 law claims pursuant to 28 U.S.C. §1367(a).
7

8 **PARTIES**

9 7. Plaintiff State of Alaska is a sovereign state of the United States.
10 The State owns highway rights-of-way granted by the United States pursuant to
11 R.S. 2477.

12 8. Defendant United States is a sovereign nation and holds title to
13 real property traversed by the rights-of-way that are the subject of this action.
14

15 9. Defendant Gale A. Norton is Secretary of the Interior and is
16 responsible in this capacity for administering certain federal laws, including
17 R.S. 2477, that relate to public lands in Alaska. Defendant Norton is responsible
18 for the administration of lands that are crossed by the Coldfoot to Chandalar Lake
19 Trail (RST 9) and the Caro to Coldfoot Trail (RST 262).
20

21 10. Defendant Michael C. Shupe is an individual who holds an
22 interest in the following state mining claims located within the State of Alaska that
23 are subject to conflict with the Coldfoot to Chandalar Lake Trail (RST 9) and Caro
24 to Coldfoot Trail (RST 262) rights-of-way: ADL 640339, ADL 640340.
25

26 11. Defendant William C. Fejes is an individual who holds an
interest in the following state mining claims located within the State of Alaska that

1 are subject to conflict with the Coldfoot to Chandalar Lake Trail (RST 9) and Caro
2 to Coldfoot Trail (RST 262) rights-of-way: ADL 640580, ADL 640582, ADL
3 640583, ADL 640585.

4
5 12. Defendant Kim Dolphin is an individual who holds an interest
6 in the following state mining claims located within the State of Alaska that are
7 subject to conflict with the Coldfoot to Chandalar Lake Trail (RST 9) and Caro to
8 Coldfoot Trail (RST 262) rights-of-way: ADL 50804, ADL 508405, ADL
9 508406, ADL 508407.
10

11 13. Defendant Brenda Fair is an individual who holds an interest in
12 the following unpatented federal mining claim located within the State of Alaska
13 that is subject to conflict with the Coldfoot to Chandalar Lake Trail (RST 9) and
14 Caro to Coldfoot Trail (RST 262) rights-of-way: FF94179.
15

16 14. Defendants Brenda and Dan Fair are individuals who hold an
17 interest in the following unpatented federal mining claims located within the State
18 of Alaska that are subject to conflict with the Coldfoot to Chandalar Lake Trail
19 (RST 9) and Caro to Coldfoot Trail (RST 262) rights-of-way: FF94172, FF94173,
20 FF94174, FF94175, FF94177, FF94178.
21

22 15. Defendant Shany Fair is an individual who holds an interest in
23 the following unpatented federal mining claims located within the State of Alaska
24 that are subject to conflict with the Coldfoot to Chandalar Lake Trail (RST 9) and
25 Caro to Coldfoot Trail (RST 262) rights-of-way: FF94101, FF94102.
26

1 16. Defendant Timothy Garnett is an individual who holds an
2 interest in the following unpatented federal mining claims located within the State
3 of Alaska that are subject to conflict with the Coldfoot to Chandalar Lake Trail
4 (RST 9) and Caro to Coldfoot Trail (RST 262) rights-of-way: FF58137, FF58138.
5

6 17. Defendant Deryl F. Krause is an individual who, as the heir to
7 Floyd E. Krause, holds an interest in the following state mining claim located
8 within the State of Alaska that is subject to conflict with the Coldfoot to Chandalar
9 Lake Trail (RST 9) and Caro to Coldfoot Trail (RST 262) rights-of-way: ADL
10 513834.
11

12 18. Defendant Lloyd D. Swenson is an individual who holds an
13 interest in the following unpatented federal mining claims located within the State
14 of Alaska that are subject to conflict with the Coldfoot to Chandalar Lake Trail
15 (RST 9) and Caro to Coldfoot Trail (RST 262) rights-of-way: FF93169, FF93170,
16 FF93171.
17

18 19. Defendant Tim J. Swenson is an individual who holds an
19 interest in the following unpatented federal mining claims located within the State
20 of Alaska that are subject to conflict with the Coldfoot to Chandalar Lake Trail
21 (RST 9) and Caro to Coldfoot Trail (RST 262) rights-of-way: FF94055, FF94056,
22 FF94057.
23

24 20. Defendant Jack McManus is an individual who holds an interest
25 in the following land located within the State of Alaska that is subject to conflict
26

1 with the Coldfoot to Chandalar Lake Trail (RST 9) right-of-way: USS 4096,
2 subject of U.S. Patent 50-75-0133.

3 **21.** Defendant Petro Star, Inc., is a corporation that holds an interest
4 in land located within the State of Alaska that is subject to conflict with the
5 Coldfoot to Chandalar Lake Trail (RST 9) and Caro to Coldfoot Trail (RST 262)
6 rights-of-way in the following location: Fairbanks Meridian, Township 028N,
7 Range 012W, section 15.
8

9 **22.** Defendant Doyon Limited is a regional native corporation
10 that has an interest in land included within the following regional land selection
11 applications under the Alaska Native Claims Settlement Act located within the
12 State of Alaska that are subject to conflict with the Coldfoot to Chandalar Lake
13 Trail (RST 9) and Caro to Coldfoot Trail (RST 262) rights-of-way: FF40284,
14 F 21904-60, FF21906-02, FF21904-59.
15

16 **23.** Defendant Alaskan Northwest Natural Gas Transportation
17 Company is a partnership that holds an interest in the following pipeline right-of-
18 way for the transportation of gas across land located within the State of Alaska
19 that is subject to conflict with the Coldfoot to Chandalar Lake Trail (RST 9) and
20 Caro to Coldfoot Trail (RST 262) rights-of-way: ADL 414956.
21

22 **24.** Defendant Yukon Pacific Corporation is a corporation that holds
23 an interest in the following pipeline right-of-way for the transportation of gas, the
24 Trans-Alaska Gas System (TAGS), across land located within the State of Alaska
25
26

1 that is subject to conflict with the Coldfoot to Chandalar Lake Trail (RST 9) and
2 Caro to Coldfoot Trail (RST 262) rights-of-way: ADL 415224.

3 25. Defendant Sukakpak, Inc., is a corporation that:

4 a. holds an interest in the following right-of-way for
5 telephone lines across land located within the State of Alaska that is
6 subject to conflict with the Coldfoot to Chandalar Lake Trail (RST
7 9) and Caro to Coldfoot Trail (RST 262) rights-of-way: ADL
8 415686;
9

10 b. is the owner of Coldfoot Camp, a company that holds an
11 interest in the following right-of-way for power transmission lines
12 across land located within the State of Alaska that is subject to
13 conflict with the Coldfoot to Chandalar Lake Trail (RST 9) and Caro
14 to Coldfoot Trail (RST 262) rights-of-way: FF93757.
15
16

17 **FACTS**

18 26. The Coldfoot to Chandalar Lake Trail (RST 9) right-of-way is
19 located in the north-central part of the State of Alaska in the southern foothills of
20 the Brooks Range, an area shown on the USGS 1:250,000 scale maps for the
21 Chandalar and Wiseman quadrangles. The trail starts from Coldfoot, at mile 254
22 of the Dalton Highway, runs eastward along the northern bank of the South Fork
23 of the Koyukuk River to the North Fork of the Chandalar River. The route
24 continues north northeastward along the North Fork of the Chandalar River to
25 Chandalar Lake. The route follows the southern shore of the lake and continues to
26

1 the public airstrip in the Chandalar Lake subdivision. The trail is mapped on the
2 USGS 1:63,360 scale maps Wiseman A-1, B-1 and Chandalar A-6, B-4, B-5 and
3 B-6. The trail is approximately 65 miles long. *See Exhibit A.*

4
5 **27.** The Coldfoot to Chandalar Lake Trail (RST 9) is a section of the
6 historic Venetie Trail, which runs from Coldfoot to Venetie via Caro, and the
7 majority of it overlaps the Caro to Coldfoot Trail (RST 262). This trail served as
8 an access and supply route for the mining communities in northcentral Alaska.
9
10 The Coldfoot to Chandalar Lake Trail was first used in 1906 to access the gold
11 fields of the Chandalar Lake region from the town of Coldfoot in the southern
12 Brooks Range. It continued to be used as a route of travel in both summer and
13 winter to reach mining claims in the Chandalar Lake vicinity. The trail is shown
14 in the 1973 Department of Transportation and Public Facilities Trails Inventory on
15 map 123 (Chandalar Quadrangle) as trail #40, #41. The trail is also mapped on
16 historic USGS maps for Chandalar and Wiseman from the 1950s.

17
18 **28.** The Caro to Coldfoot Trail (RST 262) right-of-way is located in
19 the north-central part of the State of Alaska in the southern foothills of the Brooks
20 Range, an area shown on the USGS 1:250,000 scale maps for the Chandalar and
21 Wiseman quadrangles. The trail starts from Caro and travels in a westerly
22 direction, crosses the middle fork of the Chandalar River, continues on to Big
23 Creek and Goldbug Creek, and crosses the north fork of the Chandalar River. The
24 trail travels across the south fork flats, crosses the south fork of the Koyukuk
25 River, and continues along Slate Creek to Coldfoot. The trail is mapped on USGS
26

1:63,360 Chandalar A-3, A-6, B-3, B-4, B-5 and B-6, and on Wiseman A-1 and B-1 quadrangle maps. The route is approximately 85 miles long. *See Exhibit A.*

29. The Caro to Coldfoot Trail (RST 262) is a section of the historic Venetie Trail, which runs from Coldfoot to Venetie via Caro, and the majority of it overlaps the Coldfoot to Chandalar lake Trail (RST 9). The Caro to Coldfoot Trail is a historic trail that was used as a connecting route from the Yukon River at Beaver through Caro to the Koyukuk Mining District. The trail is shown in the 1973 Department of Transportation and Public Facilities Trails Inventory on map 123 (Chandalar Quadrangle) as trail #40, #41, and #42, and on map 124 (Wiseman Quadrangle) as trail #41 and #48. It is included in Alaska Road Commission (ARC) documents as route #23E, "Caro- Coldfoot." The trail is also mapped on historic USGS maps for Chandalar and Wiseman from the 1950s.

30. The United States and Gale A. Norton, in her capacity as Secretary of the Interior, refuse to recognize the Coldfoot to Chandalar Lake Trail (RST 9) and Caro to Coldfoot Trail (RST 262) as R.S. 2477 rights-of-way.

31. The non-federal defendants hold interests in certain state or federal mining claims or other interests in land that encompass portions of the Coldfoot to Chandalar Lake Trail (RST 9) or Caro to Coldfoot Trail (RST 262).

FIRST CLAIM FOR RELIEF

(Quiet Title Act - as against defendants United States and
Gale A. Norton in her capacity as Secretary of the Interior)

32. Plaintiff realleges the allegations set forth in paragraphs 1-31
above.

33. Pursuant to 28 U.S.C. § 2409a (the "Quiet Title Act"), the
United States is subject to suit to quiet title to real property in which both plaintiff
and the United States claim an interest.

34. R.S. 2477 granted the rights-of-way for the construction of
highways over unreserved public land.

35. In the District Organic Act of May 17, 1884, ch. 53, § 8, 23
Stat. 24, Congress made R.S. 2477 applicable to the Territory of Alaska.

36. The R.S. 2477 grant constituted a standing offer of federal lands
for public rights-of-way. The offer could be accepted, prior to its repeal in 1976,
by public use for such a period of time and under such conditions so as to
demonstrate acceptance of the grant.

37. The Coldfoot to Chandalar Lake Trail (RST 9) and Caro to
Coldfoot Trail (RST 262) were accepted by public use beginning about the start of
the Twentieth century.

38. At the time of their acceptance, the Coldfoot to Chandalar Lake
Trail (RST 9) and Caro to Coldfoot Trail (RST 262) were located on unreserved
public land within the meaning of R.S. 2477.

1 39. The Coldfoot to Chandalar Lake Trail (RST 9) and Caro to
2 Coldfoot Trail (RST 262) were constructed and constitute highways within the
3 meaning of R.S. 2477.

4 40. By virtue of its ownership of the R.S. 2477 rights-of-way, the
5 State claims an interest in the Coldfoot to Chandalar Lake Trail (RST 9) and Caro
6 to Coldfoot Trail (RST 262) within the meaning of the Quiet Title Act.

7 **SECOND CLAIM FOR RELIEF**

8 (R.S. 2477- as against the non-federal defendants)

9 41. Plaintiff realleges the allegations set forth in paragraphs 1-40
10 above.

11 42. The State is the owner of rights-of-way for the Coldfoot to
12 Chandalar Lake Trail (RST 9) and Caro to Coldfoot Trail (RST 262) pursuant to
13 R.S. 2477.

14 43. The non-federal defendants hold property interests that are in
15 conflict with the State's interests in the rights-of-way.

16 44. An actual controversy exists between the State and the non-
17 federal defendants arising out of the property interests referenced in paragraph 43
18 above.

19 45. Pursuant to 28 U.S.C. § 2201, the State is entitled to a
20 declaration that the property interests of the non-federal defendants are subject to
21 the State's rights-of-way for the Coldfoot to Chandalar Lake Trail (RST 9) and
22 Caro to Coldfoot Trail (RST 262) where they conflict.
23
24
25
26

THIRD CLAIM FOR RELIEF

(AS 09.45.010 – as against the non-federal defendants)

46. Plaintiff realleges the allegations set forth in paragraphs 1-45 above.

47. The State is in possession of the Coldfoot to Chandalar Lake Trail (RST 9) and Caro to Coldfoot Trail (RST 262) rights-of-way within the meaning of AS 09.45.010.

48. The non-federal defendants hold property interests in conflict with one or more of the rights-of-way.

49. In each instance where a right-of-way crosses land in which a non-federal defendant claims an interest, the right-of-way is a superior interest to that of the non-federal defendant.

50. By virtue of their interests in certain property that encompass some portion of the Coldfoot to Chandalar Lake Trail (RST 9) or Caro to Coldfoot Trail (RST 262), the non-federal defendants claim an interest in the right-of-way adverse to the State within the meaning of AS 09.45.010.

FOURTH CLAIM FOR RELIEF

(AS 09.45.630 – Pleading in the alternative as against the non-federal defendants)

51. Plaintiff realleges the allegations set forth in paragraphs 1-50 above.

52. The State holds a legal estate in the Coldfoot to Chandalar Lake Trail (RST 9) and Caro to Coldfoot Trail (RST 262) rights-of-way.

1 53. The non-federal defendants purport to be in possession of
2 portions of such rights-of-way that cross the property in which they hold an
3 interest.

4 54. The State has a present right to possession of the rights-of-way
5 and is entitled to recover possession of the same from the non-federal defendants
6 pursuant to AS 09.45.630.
7

8 **PRAYER FOR RELIEF**

9 Wherefore, the State of Alaska prays for judgment as follows:
10

11 a. A decree against defendant United States and defendant Gale A.
12 Norton, in her capacity as Secretary of the Interior, quieting title to the Coldfoot to
13 Chandalar Lake Trail (RST 9) and Caro to Coldfoot Trail (RST 262) in the State
14 of Alaska as rights-of-way created under R.S 2477.
15

16 b. A declaration that the property interests of the non-federal
17 defendants are subject to State held rights-of-way for the Coldfoot to Chandalar
18 Lake Trail (RST 9) and Caro to Coldfoot Trail (RST 262) where they conflict.
19

20 c. A decree against the non-federal defendants quieting title to the
21 Coldfoot to Chandalar Lake Trail (RST 9) and Caro to Coldfoot Trail (RST 262)
22 in the State of Alaska where such right-of-way crosses land in which a non-federal
23 defendant claims an interest, pursuant to AS 09.45.010.
24


25 d. A decree ejecting the non-federal defendants from any possession
26 in conflict with the Coldfoot to Chandalar Lake Trail (RST 9) and Caro to
Coldfoot Trail (RST 262) in the State of Alaska pursuant to AS 09.45.630.

1 e. An award of costs incurred by the State and such other fees as
2 may be allowed by applicable law.

3 f. Such other relief as the Court deems appropriate.

4 Respectfully submitted this 11th day of April, 2005.
5

6 DAVID W. MÁRQUEZ
7 ATTORNEY GENERAL

8 By: 
9 Elizabeth J. Barry
10 Laura C. Bottger
11 Assistant Attorneys General
12 Natural Resources
13
14
15
16
17
18
19
20
21
22
23
24
25
26

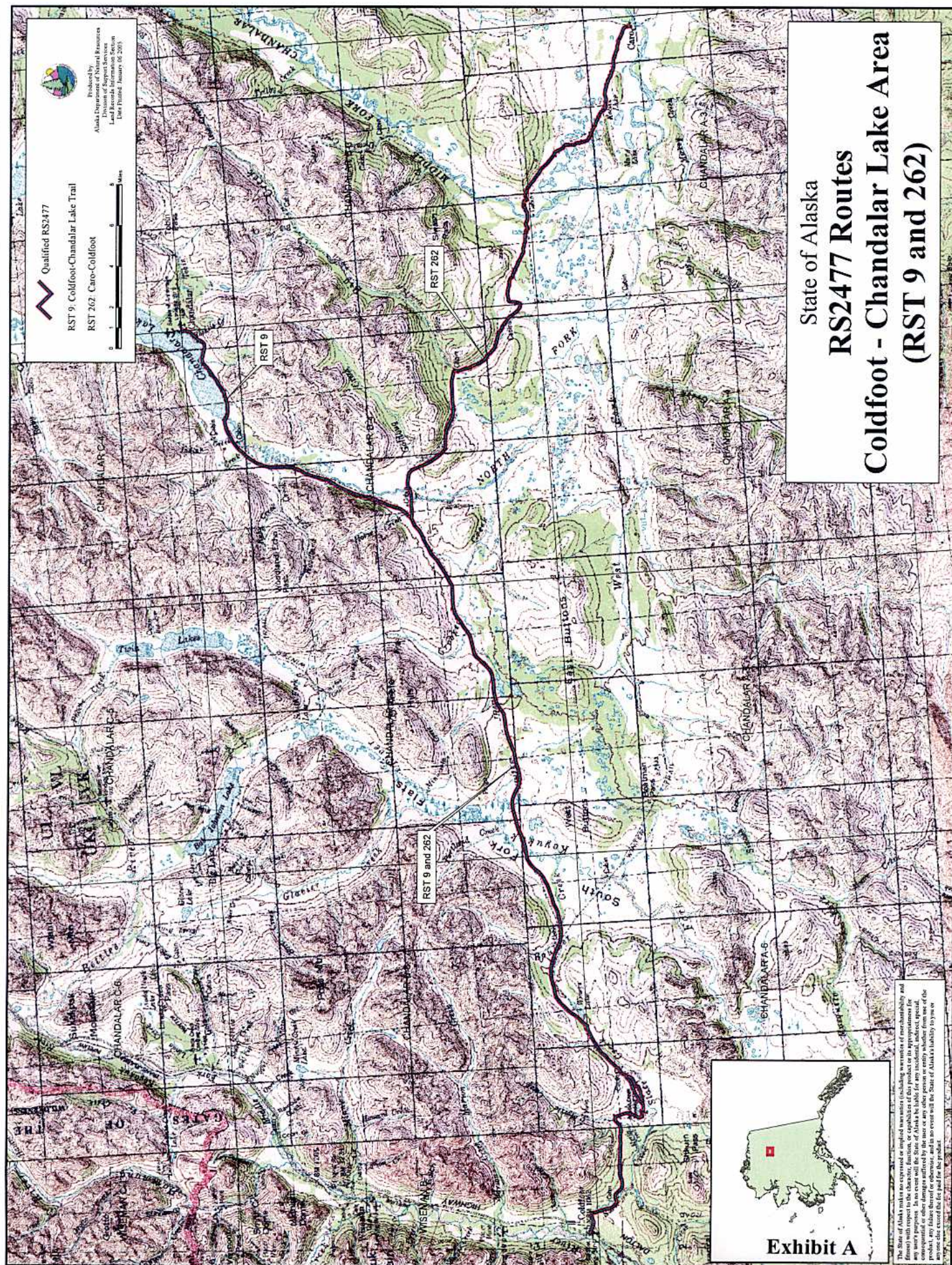


Produced by:
Alaska Department of Natural Resources
Division of Sport Services
Land Management Section
Juneau, Alaska
June 1998, January 06, 2001

Qualified RS2477

RST 9, Coldfoot-Chandalar Lake Trail

RST 262, Caro-Coldfoot



State of Alaska RS2477 Routes Coldfoot - Chandalar Lake Area (RST 9 and 262)



Exhibit A

The State of Alaska and its Department of Natural Resources, Division of Sport Services, Land Management Section, are not responsible for the accuracy, reliability, and fitness for use of the information contained in this product or its reproduction for any purpose. In no event will the State of Alaska be liable for any incidental, indirect, special, or consequential damages, including lost profits, arising out of the use of the product, even if the user has been advised of the possibility of such damages. The user assumes all liability for the use of the product.